February 2005

ETNO Reflection Document on the FCC Notice of Inquiry on Mobile Termination Charges

(FCC 04-247, IB Docket No. 04-398 in the Matter of the Effect of Foreign Mobile Termination Rates On U.S. Customers)

Executive Summary:

ETNO shares the view of the majority of stakeholders replying to this consultation that there is no rationale for the Federal Communications Commission's (FCC) intervention concerning foreign mobile termination rates. The FCC must rely on existing national regulatory frameworks, such as those in force in the European Union, which are best suited to address the issue and ensure a sustainable competition in their mobile market.

Given the competitive nature of the mobile market in the European Union, the trend must be to bolster investments and innovation, limiting regulatory interventions only to cases of market failure.

Besides, the FCC should verify that the recent and significant mobile termination rate reductions are fully and rapidly passed on to the US consumer.

As a former contributor to the International Settlement Policy (ISP) Reform proceeding launched by the FCC back in 2002 [1], the European Telecommunications Network Operators' Association (ETNO) would like to take the opportunity to comment on the Notice of Inquiry on the effects of foreign mobile termination rates on US customers.

1. ETNO[2] is the principal trade association for European telecoms operators representing 41 companies from 34 countries, several of which are also present in the US market. The main objective of the Association is to encourage and contribute to a constructive dialogue with other actors involved in the development of the Information Society, for the benefit of users. ETNO thus contributes to the development of policies leading to an

[1] See ETNO Comments in IB Docket No. 02-324, FCC 02-285 (13 January 2003) - Expert Contribution EC46 http://www.etno.be/PDFSearchFiles/papersDetail.asp?ID=162.

[2] See http://www.etno.be

efficient and fair regulatory and trading environment for European telecommunications operators in Europe and abroad.

2. In line with the arguments provided by the majority of contributors during the first stage for comments of the NOI[3], ETNO believes that the FCC should refrain from any unilateral measure that would imply extra-territorial reach on issues relating to foreign mobile termination rates. The FCC risks exceeding the limits of its jurisdiction, as the consultation extends beyond the US territory touching upon issues related to the global telecommunications market.

3. As stated in several comments, in the case of foreign mobile termination rates, none of the needed premises to trigger the FCC's jurisdiction apply as there is no discrimination against US customers or any harm resulting from anti-competitive behaviour by foreign mobile operators. There is no rationale for additional action to that already undertaken by national regulatory authorities to ensure a sustainable competition in their mobile market. Should a problem arise in a particular country, the relevant national regulator is best placed to collect appropriate data and analyse specific market conditions.

4. In the case of Europe, the EU and national regulatory authorities are empowered and competent to address possible problems of market failure if and when they arise[4]. Following the provisions of the EU's new regulatory framework for the electronic communications market in terms of market analysis and adoption of remedies, many national regulatory authorities have already taken regulatory actions to lower mobile termination rates for the benefit of European, American and worldwide consumers. According to the objectives of the new framework, regulatory interventions must be justified and proportionate, and not jeopardize market growth and investment in the EU.

5. ETNO wishes to point out that, as indicated in the tenth implementation report of the European Commission[5], the European mobile market is very competitive. Mobile termination rates have fallen over the past years at an

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[3] See inter alia comments of CTIA - The Wireless Association, GSM Association, GSM Europe, Inc, CANTO (*the Caribbean Association of National Telecommunication Organizations*), AHCIET (*The Asociacion Hispanoamericana de Centros de Investigación y Empresas de Telecomunicaciones*), Verizon, BellSouth Corporation, NTT DoCoMo, Telefonica S.A., Telecom Italia Group, Orange SA, Vodafone Americas, Western Wireless International Corporation Digicel USA.

[4] See:
- European Commission Comments in IB Docket No. 02-324, FCC 02-285 (13 February 2003)
- Letter from Erkki Liikanen, European Commission to Chairman Michael Powell (4 March 2004).

[5] Annex to THE EUROPEAN ELECTRONIC COMMUNICATIONS REGULATION AND MARKETS 2004 (10TH REPORT)
Commission staff working paper Volume 1, at page 64
http://europa.eu.int/information_society/topics/ecomm/all_about/implementation_enforcement/annualreports/10threport/index_en.htm

average rate of 14% for EU SMP operators between July 2003 and July 2004. While some countries in Europe have decided to let market forces put pressure on termination rates, others have adopted regulatory measures.

6. The FCC should verify that these rate reductions are fully passed on to the US end consumer or if their only result in an increase of the main US international carriers' margins.

7. The FCC raises again the question of whether a "calling party pays" regime (CPP) in foreign market leads to artificially inflated international mobile termination charges and potentially encourages market abuse. As price structures under the US "receiving party pays" (RPP) system and the European CPP system are different, rough comparisons made between absolute levels of mobile termination rates between US and overseas mobile carriers can often be misinterpreted.

Under the RPP system termination prices represent only one part of the transport service, namely the fixed path. The second part, the mobile path, is paid by the receiving network. These money flows are recovered by billing the receiving mobile customer and through subscription prices. When assessing price levels one must take into account all costs involved.

8. As stated by the FCC itself[6], the CPP model is used in most countries in the world as a sound basis for the development of the mobile sector, based on CPP ability to allow higher penetration rates and diminish entry barriers. This has been the case in all European countries, where mobile services have been efficiently developed in a competitive environment and reached the highest penetration rates.

9. It should be acknowledged that there is a difference in cost structures between mobile and fixed termination. Mobile termination rates do not discriminate against US consumers and are not used to subsidize foreign mobile operators. A benchmark approach such as the one used by the FCC to address discriminatory accounting rates by foreign monopoly operators is not applicable to mobile termination rates, notably because of the complexity of the mobile allocation cost methodologies and the number of country specific factors to be taken into consideration.

10. Besides, given the competitive nature of the wireless market in the European Union, it would be counter productive to focus only on rate regulation. As pointed out in some comments[7], the US Administration and Congress promote competition over regulation in the communications services sector. In this respect it would be worrying to see the FCC – that

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[6] See FCC 02-285 NPRM in the matter of International Settlements Policy Reform and International Settlement Rates (11October 2002)at 45:

[7] *See, e.g:*
Verizon Section 1377 Reply Comments (January 17, 2005) at page 2
Bellsouth Corporation Notice of Inquiry Comments (January 14, 2005) at page 9 and 10

advocates the lowering of regulatory interventions to foster innovation and investments in the US - apply a different approach when looking at foreign markets.

11. In summary, ETNO would like to guard the FCC against unilateral provisions with an extraterritorial impact which increases regulatory intervention in the mobile sector neither justified nor needed in the European Union.